IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.753 OF 2005

Shri Jayantilal Chhabildas Gohil ...Applicant.

V/s

M/s. Aminex Rasayan & Anr. ...Respondents.

Mr. Prakash Naik for the applicant.
Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 31st March, 2005

P.C.:

1. Heard the learned Counsel for the applicant.

2. Applicant is challenging the order of issuance of process passed by the Metropolitan Magistrate 33rd Court at Bellard Pier, Mumbai in a complaint filed by respondent No.1 under section 138 of the Negotiable Instruments Act.

3. It is submitted by the learned Counsel appearing on behalf of the applicant that there are no averments in the complaint that the applicant is responsible for day-to-day affairs of the Company. It is stated that in order to invoke section 141 of the Negotiable Instruments Act, there has to be a specific averment in the complaint regarding liability of a Director. It is further submitted that applicant was appointed

on contractual basis for a period upto 31/3/1994 and, thereafter, this period was not renewed. It is submitted that the applicant, therefore, is ceased to be the authorized signatory of a Company and also ceased to be the Director of accused No.1. It is further submitted that the accused No.1 - Company had informed the Bank that the applicant was no longer the authorized signatory. It is further submitted that the application was, therefore, an Executive Director appointed on the contractual basis and, therefore, it could not be said that he was responsible for day-to-day affairs and business of the Company.

4. It is not possible to accept the submissions made by the learned Counsel for the applicant. In my view, all these questions which are raised by the applicant in this application cannot be decided at this stage by the High Court while exercising its jurisdiction under section 482 of the Criminal Procedure Code. These questions can only be decided after the evidence is led by both the parties and, thereafter, trial court would be in a position to decide whether the applicant was an Executive Director and he ceased to be the authorized signatory after 1994. So far as the submission made by the learned Counsel for the applicant that there are no averments in the

complaint and therefore the complaint is liable to be dismissed is concerned, in my view, the said submission also cannot be accepted. I have perused the complaint. It is mentioned in paragraph 4 of the complaint that notice was issued to the accused on 14/5/1994 and they were called upon to pay the said amount. However, they failed and neglected to pay the amount within 15 days from the receipt of the notice. This fact is not disputed by the accused. This aspect also can be considered by the Trial Court at the time of hearing of the criminal case. Hence, there is no merit in the submissions made by the learned Counsel appearing for the applicant.

5. Criminal Application is accordingly dismissed.

V.M. KANADE, J.